87-1753

No.

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1987

LEWIS duPONT SMITH,

Petitioner,

vs.

E. NEWBOLD SMITH, MARGARET duPONT SMITH, STOCKTON N. SMITH, ELEUTHERA S. GRASSI and HENRY B. duPONT SMITH,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED FOR REVIEW

1. Does the lower courts' inclusion of contributions to national political organizations within the meaning of "liable to become the victim of designing persons", as that phrase is used in the Pennsylvania guardianship statute, offend basic First Amendment principles of freedom of political expression and association?

2. Does the lower courts' inclusion of mere and common personality disorders within the definition of "mental illness" in the guardianship statute offend basic First Amendment principles of freedom of political expression and association?

3. Does the lower courts' construction of the Pennsylvania guardianship statute which fails to limit the definition of "mental illness" and "designing persons" render the statute void for vagueness and impermissibly overbroad?

LIST OF PARTIES

The caption of the case in this Court contains the names of all parties to the proceeding in the court whose judgment is sought to be reviewed.

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E. NEWBOLD SMITH, MARGARET duPONT SMITH, STOCKTON N. SMITH, ELEUTHERA S. GRASSI, AND HENRY B. duPONT SMITH,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

The petitioner, Lewis duPont Smith, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Superior Court of Pennsylvania, entered in the above-entitled proceeding on July 21, 1987.

OPINIONS BELOW

The panel opinion of the Superior Court of Pennsylvania (Beck, J., concurring) is reported at 529 A.2d 466, 365 Pa. Super. 195 (1987) and is reprinted in the Appendix hereto, p. 4a, *infra*.

The final order and memorandum decision of the Chester County Court of Common Pleas (Wood, J.) has not been reported. It is reprinted in the Appendix hereto, p. 17a, *infra*.

The adjudication and decree nisi of the Chester County Court of Common Pleas (Wood, J.) is reported at 34 Chester Co. Rep. 93 (1986) and is reprinted in the Appendix hereto, p. 20a, *infra*.

STATEMENT OF JURISDICTION

The judgment of the Superior Court of Pennsylvania was entered on July 21, 1987, affirming the trial court's final order dated July 23, 1986, which adjudicated petitioner incompetent within the meaning of the Pennsylvania conservatorship statute. On January 21, 1988, the Supreme Court of Pennsylvania declined to exercise its discretionary review and denied petitioner's request for allowance of appeal; therefore, on that date, the decision of the Pennsylvania Superior Court became the final judgment of the highest state court in which a decision could be had. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of

speech, or of the press, or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV, Section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

20 Pa. C.S.A. § 5501(1). Meaning of incompetent

"Incompetent" means a person who, because of infirmities of old age, mental illness, mental deficiency or retardation, drug addiction or inebriety:

(1) is unable to manage his property, or is liable to dissipate it or become the victim of designing persons; . . .

STATEMENT OF THE CASE

A. Background

The petitioner, Lewis duPont Smith, the 31 year old son of E. Newbold and Margaret duPont Smith, is the heir to a significant portion of the duPont family fortune. Prior to Judge Wood's

ruling in this case and the Superior Court panel's affirmance thereof, Lewis had direct access to approximately 1.5 million dollars in assets and marketable securities. He also received substantial income from the principal in several irrevocable trusts. His total estate, including trusts, is valued at approximately 8 million dollars.

Lewis graduated from the University of Michigan in 1980 with a Bachelor of Science degree in Liberal Arts and a better than C average. From 1980 until 1984, Lewis held various jobs in sales and teaching. He worked as a sales representative for NBC Sports and Time/Life Incorporated. He also taught at the Hill School in Pottstown, Pennsylvania, and at the Rectory School in Connecticut. He then attended graduate courses in American History at Harvard University in the summer of 1983. Most recently, he taught American History and English to high school students at the Friends Central School in Philadelphia.

Lewis first became aware of the LaRouche political philosophies in the spring of 1983. He began to investigate these ideas and he read their literature. Interested by what he read, he contacted the LaRouche affiliated groups to learn more, particularly regarding LaRouche's views on political economics and its relation to American history, which has always been his main interest.

In the fall of 1984, Lewis obtained materials that LaRouche supporters had published concerning the Civil War because he wanted to introduce these articles as supplements to the texts in an attempt to broaden the perspective of his history classes at Friends Central. As a result of his renewed interest, Lewis researched and studied, went to a national conference, and met with members of the national committee at LaRouche headquarters in Leesburg, Virginia. It was as a result of these activities — nearly two years after his initial exposure — that Lewis decided in January

1985, to become involved and to actively and firmly espouse the ideas and writings of Lyndon LaRouche.

In particular, and these facts are substantially undisputed, petitioner loaned a total of $212,000 (some of which had been paid back) to two organizations that publish and distribute political literature generally supportive of the world view that Mr. LaRouche espouses. In early April, Lewis was planning to make an additional loan of $75,000. He made no secret of his plans and advised a family member.

B. Course of Proceedings Below

On April 11, 1985, upon learning of petitioner's intentions to loan additional money, the parents and siblings of Lewis duPont Smith filed a petition for adjudication of incompetency and appointment of a guardian of his estate as well as a petition for preliminary injunction to prevent Lewis from providing financial support to organizations associated with Lyndon LaRouche and his political beliefs. In these pleadings, the family alleged, pursuant to the conservatorship statute, that petitioner had a "mental illness" which made him "unable to manage his property, or is liable to dissipate it or become the victim of designing persons." The basis for their allegation was petitioner's involvement with and espousal of the politics and ideas of Lyndon LaRouche and his growing support and commitment to organizations which are generally supportive of the views of Mr. LaRouche. On the basis of the family members' bare allegations, Judge Wood granted an *ex parte* preliminary injunction on April 11, 1985.

Several days later, after hearing testimony from Lewis concerning his financial and philosophical commitment to Mr. LaRouche's ideas and others aligned with LaRouche, Judge Wood preliminarily enjoined petitioner from using his money to make "any loan, gift or contribution; whether charitable, political, or

personal . . . [that] directly or indirectly benefit any political or charitable organizations . . . without the prior written approval of this Court. *For purposes of this Order, the term 'political or charitable organizations' shall include any organization in any way associated with Linden (sic) R. LaRouche, Jr.*" (emphasis added; R6a).

After intermittent hearings throughout the spring and summer of 1985,[1] Judge Wood entered a decree nisi upon adjudication on November 12, 1985, and found Lewis to be incompetent within the meaning of the Pennsylvania guardianship statute, 20 Pa. C.S.A. § 5501(1), stating that " . . . by reason of mental illness, (he) is unable to manage his property, or is liable to dissipate it or become the victim of designing persons." (p. 26a, *infra*). In his discussion of the evidence, the trial judge said he was convinced that Lewis had a "personality disorder, at least." (p. 24a, *infra*). At the specific request of the family, Judge Wood then appointed the Wilmington Trust Company as guardian of petitioner's estate. The evidence adduced at these hearings included the testimony of mental health professionals, but a significant portion of the hearings, including that of the professionals, was devoted to an exploration of petitioner's political beliefs and his support of the political philosophy of Mr. LaRouche. Also, there was absolutely no evidence of record that the LaRouche affiliated organizations were anything but bona fide political organizations.

Various family members testified that Lewis had undergone a severe personality change because he had become considerably

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1. These evidentiary hearings were ostensibly held for the purpose of determining whether the preliminary injunction would remain in effect. After these evidentiary hearings were completed on August 30, 1985, Lewis (not believing that the record in any way supported a finding of incompetency) waived his right to a jury trial and agreed that the evidence received on the preliminary injunction could be incorporated as the sum total of the evidence on the adjudication of incompetency in the case-in-chief.

more "serious." His mother testified that he had become secretive and hostile in the beginning of April, but this occurred some days after his sister had told Lewis that the family had covertly planned to file these actions to have him declared incompetent.

The testimony of the mental health professionals was conflicting. Dr. David Halperin, testifying on behalf of the family, claimed that Lewis was suffering from a schizoaffective disorder and as a result was mentally ill. Drs. Gerald Cooke and Robert Sadoff, testifying in behalf of petitioner, directly refuted Dr. Halperin's diagnosis. After their separate and independent examinations of Lewis, they concluded Lewis had a "mixed personality disorder." Dr. Sadoff and Dr. Cooke were uncontradicted in their testimony that a "personality disorder" is not a mental illness. They also independently stated that Lewis duPont Smith did not suffer from a mental illness.

Although Judge Wood accepted the diagnosis of Drs. Cooke and Sadoff and concluded that "Lewis does indeed suffer from a personality disorder" (p. 24a, *infra*), he nonetheless found that Lewis suffered from a "mental illness" within the meaning of the conservatorship statute in disregard of the expert testimony that Lewis's personality disorder was not a mental illness.

In rejecting Lewis's exceptions to the adjudication and decree nisi, Judge Wood discarded petitioner's claim that the court's decision violated his First Amendment rights to freedom of speech and association, stating "[i]t is not that kind of case . . . Lewis's First Amendment freedoms remain intact, and he may exercise them as foolishly as he wishes." *See* p. 18a, *infra*.[2]

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2. Subsequent to his final order, Judge Wood entered two more orders regarding Lewis's applications for the release of funds from his assets. On September 12, 1986, Judge Wood directed the Wilmington Trust Company to

(Cont'd)

On July 21, 1987, the Pennsylvania Superior C
in large part that the trial court had rejected a c
major mental illness found that the evidence wa
establish the undefined "mental illness", essentiall
reasoning of the lower court, and affirmed the orde
petitioner incompetent and appointing a guardia

On January 21, 1988, the Supreme Court of
denied Lewis's petition for allowance of appeal a
exercise its discretionary review of the Superior
(p. 1a, *infra*).

C. How the Federal Question Was Presented

Petitioner, Lewis duPont Smith, has consiste
federal questions sought to be reviewed at ever
proceedings below. In the trial court, the petitic
constitutional issues in closing argument at trial, ir
to the decree nisi, and in trial memoranda both b
of the decree nisi on November 12, 1985, and pri
of the final order on July 23, 1986.[3] Indeed, in
Judge Wood acknowledged petitioner's persistence

(Cont'd)
release $5,635.08 of Lewis's funds for the purchase of a pia
19, 1986, Judge Wood refused to release $1,000 to Lewis
making a political contribution to his cousin's presidentia
duPont for President."

3. Prior to the issuance of the final order, Lewis also
the United States District Court for the Eastern District of
86-3670) to enjoin the state court proceedings before Judge W
that Lewis' constitutional and civil rights had been violatec
rulings. Without ruling on the merits of Lewis' claim that
statute was unconstitutional, the District Court dismissed hi
that defendants were not state actors and/or were not pr
suit. The court also found that abstention would have been

federal questions noting that "[c]ounsel for Lewis has consistently treated this proceeding as one dealing with Lewis' rights to free speech and free association." *See* p. 18a, *infra*. Judge Wood failed to address the constitutional issues however stating summarily that "[i]t is not that kind of case." (p. 18a, *infra*).

Petitioner again raised the federal questions presented here in his brief to the Superior Court of Pennsylvania. The Superior Court also declined to address the constitutional issues raised by petitioner citing as its reason therefor petitioner's lack of notice to the Attorney General of Pennsylvania pursuant to Pa. R.A.P. § 521. *See* pp. 5a-6a, *infra*. Such notice is required under that rule when a party draws in question the constitutionality of any statute in an appellate court in Pennsylvania.

It should be noted that counsel's failure to notify the Attorney General was *not* an oversight. Throughout these proceedings, petitioner has always framed his constitutional arguments in syllogistic form. That is, *if* the lower courts' construction of the guardianship statute is accepted, *then* that construction renders the statute unconstitutional. Petitioner has not directly attacked the constitutionality of the incompetency statute on its face because the courts of Pennsylvania and the rest of the nation have historically construed this and similar statutes so narrowly and restrictively that the statute has heretofore always met constitutional muster.

It is sufficient to note at this point that petitioner has vigorously raised and conscientiously pled the constitutional issues presented here at every level of these proceedings. Indeed, the Supreme Court of Pennsylvania has previously held that when constitutional issues have been otherwise properly pled in the lower courts, it would not decline to hear constitutional arguments merely for the lack of notice to the Attorney General. *Commonwealth ex rel. Stein v. Stein*, 487 Pa. 1 (1979) (Justice Nix). In any event,

petitioner *did* notify the Attorney General of Pennsylvania of his appeal to the Pennsylvania Supreme Court (in which the constitutional issues were again raised). Similarly, the Pennsylvania Attorney General has been served with a copy of the instant petition.

For the purposes of this petition, however, it is essential only that petitioner presented the federal claim and the grounds therefor to the attention of the state courts with fair precision. The decisive consideration for this Court is whether the record as a whole shows either expressly or by clear intendment, that the federal claim was "brought to the attention of the state court with fair precision and in due time." *New York ex rel. Bryant v. Zimmerman,* 278 U.S. 63, 67 (1928). The Superior Court's refusal to deal with petitioner's federal arguments was a mere evasion of the issues and also was utilized in a manner which unfairly discriminated against the assertion of petitioner's federal claims; thus, this Court's jurisdiction can and should be asserted especially when considering the fundamental importance of the federal questions. *See Rogers v. Alabama,* 192 U.S. 226, 230-231 (1904); *see also, Nickel v. Cole,* 256 U.S. 222, 225 (1921).

REASONS FOR GRANTING THE WRIT

This is a case of first impression. Never before in this country has anyone ever been declared incompetent to manage his or her estate by reason of a mere and common personality disorder. Particularly where the imposition of a guardianship is predicated upon political contributions to promote one's political views and where such a judgment inexorably abrogates that right, this becomes a case of special importance by virtue of the lower court's infringement upon the petitioner's First Amendment rights to free speech, political expression, and political association.

Indeed, the lower court's vague and overbroad construction of the incompetency statute has constitutional implications for us all. What is particularly disconcerting about the trial court's final order which was affirmed by the Superior Court of Pennsylvania is the value-laden dismantling of petitioner's constitutional claims with the glib pronouncement that he may exercise his First Amendment freedoms as "foolishly as he wishes." (*see* p. 18a, *infra*). Not only do the lower courts ignore the immediate and prohibitive impact of the adjudication of incompetency upon petitioner's rights of free speech and expression,[4] but it minimizes the importance of these rights were he able to exercise them.

Finally, the potential chilling effect that the rulings of the lower courts will have on the expression of political beliefs and the exercise of First Amendment rights is a matter of immediate public importance. Accordingly, the trial court's ruling on the constitutional issues and the Superior Court panel's refusal to address these fundamental and important claims beg for review by the Supreme Court of the United States.

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4. For example, petitioner has been denied the right to vote, to enter into valid contracts, to financially support any political organizations or candidates, and his recent marriage is not yet recognized as valid.

I.

THE DECISION OF THE PENNSYLVANIA SUPERIOR COURT WHICH UTILIZES SUCH A BROAD AND LIBERAL CONSTRUCTION OF THE PENNSYLVANIA GUARDIANSHIP STATUTE RAISES FUNDAMENTAL CONCERNS FOR THE EXERCISE OF FREE SPEECH AND POLITICAL EXPRESSION THROUGHOUT THE COUNTRY AND IS THUS A MATTER OF NATIONAL IMPORTANCE.

A. Including Contributions to National Political Organizations Within the Meaning of "Liable to Become the Victim of Designing Persons" Has a Chilling Effect on the Exercise of Free Speech, Political Expression, and Political Association

Without any discussion of petitioner's First Amendment arguments — indeed, in complete disregard of his constitutional rights — the Superior Court affirmed the imposition of a guardianship on petitioner that completely prevents him from spending any money whatsoever to promote his political views and prohibits him from contributing to others whose ideas he supports. In so doing, the Superior Court was required to affirm the finding that a political organization in this country is a "designing person" within the meaning of the conservatorship statute. The national implications that this holding has for the exercise of free speech and political affiliation are obvious and repugnant. Such a construction threatens the free discussion of public issues within the context of political campaigns and indeed, threatens the entire political process. These are First Amendment activities which are integral to the operation of the system of government established by our Constitution. *See Buckley v. Valeo*, 424 U.S. 1, 14 (1976). It is a matter that is both far-reaching and nationally significant. In this, an election year, such an invidious characterization of a political organization is both particularly topical and of great public importance.

Not a scintilla of evidence was presented to the trial court that the LaRouche affiliated organizations were "designing persons." Moreover, no court of which we are aware has ever determined that a bona fide political organization, minority or majority, has ever been declared to be a designing person.

Historically, men of wealth have substantially reduced their fortunes in the support of political and/or philosophical causes without being declared incompetent. The reasons for this are obvious. Since political and philosophical organizations typically raise funds from the general population and from loyal followers of wealth to spread their views, such organizations simply cannot fall within the intent of the legislature without running seriously afoul of First Amendment protections. The First Amendment as interpreted by the Supreme Court of the United States includes the fundamental right of free political speech and freedom of association, as well as the right to contribute to those organizations to spread their philosophy. *Id.*, 424 U.S. at 24-25. Any government action which, as in this setting, so completely curtails the freedom to associate is thus subject to the closest scrutiny. *NAACP v. Alabama*, 357 U.S. 449, 460-461 (1958).

In *Buckley*, the Supreme Court agreed that contributions and expenditures of money to promote political ideas are at the very core of political expression and association and are thus protected by the First Amendment. Any limitations imposed on such contributions and expenditures constitute substantial restraints on the quantity and diversity of speech that are both gross and direct. Thus, the Court in *Buckley* held that provisions in the Federal Election Campaign Act limiting the amount which any individual could spend, independently of a candidate but relative to the candidate impermissibly abridged freedom of speech. *Id.*, 424 U.S. at 51. This is precisely the category into which petitioner's contributions and expenditures fall. Particularly relevant to this petition was the Supreme Court's pronouncement that "[t]he First

Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise." *Id.*, 424 U.S. at 57 (1976).

The importance of this case, therefore, does not turn merely on the special facts and circumstances surrounding the egregious violations of this petitioner's freedom of political expression and association; rather, this case derives its significance from the national impact on everyone's freedom to exercise these rights. If a court in any one of a variety of states in this country may declare a person incapacitated by virtue of its ruling that improvident political contributions rise to the level of an inability to make responsible decisions (*see Uniform Probate Code* § 5-103, *see also*, p. 17a, *infra)*, then no one is safe from a declaration of incompetency.

In sum, to hold that a political organization is a designing person under the incompetency statute as the Superior Court has done, is to place a severe chilling effect on the expression of political beliefs through monetary contribution by the followers of those organizations and thus violates First Amendment protections. As such, it is a matter of immediate public importance. Put another way, the Superior Court's affirmance of the adjudication of incompetency in this case sends a very real message to the public, and particularly the electorate: be careful about generous political campaign contributions. If your relatives disapprove of your political philosophies, then they can prevent you from exercising this precious First Amendment right if they can find a quirk in your personality, a psychiatrist who agrees with them, and a judge who believes that the donee is a "political organization with unusual, if not suspect, goals and motives." (*see* p. 23a, *infra*). This case begs for the Supreme Court's authoritative voice to exercise its supervisory powers and protect us all.

B. Including Common Personality Disorders Within the Ambit of "Mental Illness" in the Guardianship Statute Has a Chilling Effect on the Exercise of Free Speech and Political Expression

All fifty states in this nation have guardianship statutes which are similar in varying degrees to the Pennsylvania incompetency statute at issue here. Petitioner could find no case, however, in any of these states where a person has ever been adjudicated incompetent under such a law by reason of a mere and common personality disorder. The lack of precedent in this regard is not surprising for several reasons. First, to include a common personality disorder within the meaning of mental illness, as the Pennsylvania courts have done here, ignores the intent of the legislature and belies basic principles of statutory construction. Second, it would enlarge the class of persons subject to an adjudication of incompetency in a constitutionally impermissible way. Finally, and most importantly, it would allow courts throughout the country to utilize the philosophical views and political beliefs of individuals as the basis for adjudications of incompetency. It is the latter two of these three reasons why the United States Supreme Court should hear this case and prevent the chilling effect on political expression and association that would result from letting such a ruling stand.

The potential for abuse in such an expansive definition of mental illness is nowhere more clearly identifiable than in the decision of the trial court wherein the finding of petitioner's personality disorder/mental illness was based at least in part on the trial judge's evaluation of the process and content of petitioner's political beliefs (*see* p. 22a, *infra*, Finding of Fact #11). Illustratively, the trial court stated " . . . almost every aspect of a person's life has a bearing on whether they're mentally I'll (sic) or not" (R263a). Upon so concluding, the court admitted into evidence several letters penned by petitioner in which he discussed at length his political views. Apparently relying on these

letters as well as petitioner's testimony concerning his beliefs, the trial court inferred that Lewis's personality disorder was in part reflected by his " 'us against them' view of life and society, and a tendency to think in terms of polarization and polemics . . ." (*see* p. 24a, *infra*). Under this definition, might not some of our own leaders who denounce the Soviets as an evil empire be considered mentally ill?

Clearly, if such a definition of mental illness can be utilized to declare someone incompetent, and further, can be accomplished by stating that the peculiarity of one's political philosophy is evidence of that mental illness, then the First Amendment is in deep trouble. More importantly, what impact might an appellate court's imprimatur on such a definition have on the ability of others to feel secure in expressing unpopular political ideas and world views or in contributing to others who "profess to share [that] world view" (p. 24a, *infra*).

The constitutional implications of such a definition of mental illness are especially obvious when one considers that

> [e]pidemiological studies of mental disorder show rates as high as 80% in the population at large and even higher rates in particular age groups within a population. B.P. Dohrenwend & B.S. Dohrenwend, *Social Status and Psychological Disorder: A Causal Inquiry* 9-31 (1969); D. Mechanic, *Mental Health and Social Policy* 65-67, (1969). According to some theoretical views, all human beings are suffering from some form of mental disorder to some extent at all times. L. Kubie, *Practical and Theoretical Aspects of Psychoanalysis* 17-20, (1950).

S. J. Morse, *Crazy Behavior, Morals, and Science: An Analysis of Mental Health Law*, 51 S. Cal. L. Rev. 527, 550 (1978).

In short, if the lower court ruling is permitted to stand, none of us can feel safe to promote political views that are outside of the mainstream through the expenditure of money. The chilling effect of such a ruling is potentially both widespread and dramatic. The Supreme Court's supervisory powers are required now to arrest this abridgement of our precious First Amendment rights.

The national impact of such a definition of mental is also underscored when it is recognized that the Uniform Probate Code (UPC) has been adopted by eighteen states. *See* Uniform Probate Code, U.L.A. (Directory of Uniform Acts and Codes; Tables-Index), 1988 (pamphlet).[5] The UPC, like the Pennsylvania Guardianship Act, fails to define the term mental illness but does provide for the guardianship of the estate of incapacitated persons (*see* UPC, § 5-101, *et seq.*) and defines incapacitated persons as follows:

> Incapacitated Person. Any person who is impaired by reason of *mental illness*, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

Id., § 5-103 (emphasis added).

Clearly, if personality disorders are included within the

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5. Alabama also adopted the Uniform Probate Code on January 1, 1988. 26 Ala. Code § 26-2A-1 et seq.

meaning of mental illness in the Pennsylvania courts, then they can likewise serve as a basis for incapacitation in the courts of states that have adopted the UPC since mental illness is nowhere defined in either statute and the parameters of incompetence are equally arbitrary. That is, if the decision of the lower court is permitted to stand it would serve as a direct precedential guide to the UPC states, particularly if certiorari is denied in this case. Such a precedent can thus be seen as the first step towards a constitutional crisis in this nation. This Court should hear this case to prevent such an assault on the Constitution by providing guidance to the courts of all the states in this country as to the appropriate constitutional limitations that must attach to the construction of such statutes and particularly to the term mental illness.

II.

THE SUPERIOR COURT'S CONSTRUCTION OF THE GUARDIANSHIP STATUTE IN THIS CASE RENDERS THE STATUTE VOID FOR VAGUENESS AND IMPERMISSIBLY OVERBROAD AND VIOLATES THE DUE PROCESS PROTECTION AFFORDED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The foregoing discussion which highlighted the national impact of the lower courts' decision on the exercise of precious fundamental First Amendment rights is directly and symbiotically related to the fundamental due process concerns that are raised by the lower courts' construction of the Pennsylvania guardianship statute.

A. Vagueness

It is well settled that statutes must be drawn with sufficient

specificity to provide fair warning of the conduct proscribed by the law and to limit the discretion of governmental authorities or courts in enforcing the law. *Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972). This is true especially where the exaction of obedience to a rule or standard is so vague and indefinite as to really be no rule at all, and where instead it strips the participant of his rights.

Because the fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment [*Cantwell v. Connecticut,* 310 U.S. 296, 302 (1939)], vague state laws which infringe on First Amendment rights are to be examined even more closely and with strict scrutiny. *Ashton v. Kentucky,* 384 U.S. 195, (1966). Applying the principles enunciated above to the Pennsylvania guardianship statute and the lower courts' construction thereof, one can readily see that the standard in the law is impermissibly vague. How mentally ill must a person be before a conservatorship is required? What is meant by the term "mental illness"? How "unable to manage" his or her property must a person be? What does "liable to dissipate" mean? What is meant by "liable to . . . become the victim of designing persons"? Nothing in the statute prevents arbitrary enforcement and the result is unconstitutional vagueness.

The lower courts' construction of the statute which allows a mere personality disorder to fall within the undefined term "mental illness", and allows Lewis' financial support of LaRouche's political philosophy to be read as equivalent to "victim of designing persons", demonstrates that the statute is void for vagueness. Neither of the lower courts were able to define the term mental illness, but yet considered a personality disorder to be within its ambit. If that view were to prevail, the Supreme Court's direction that "[t] he First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise" would be meaningless.

See Buckley v. Valeo, 424 U.S. at 57. It is a rare psychiatrist indeed that would not characterize such a person who makes improvident political contributions that "beggar himself and his family" [*Matter of Caine,* 490 Pa. 24, 415 A.2d 13 (1980)] as having a personality disorder.

The statute is so imprecise in terms of who it includes within the definition of mental illness that persons of common intelligence must necessarily guess at its meaning and may differ as to its application.[6] Thus, the chilling effect on the exercise of First Amendment rights is clear and evident. That is, where a vague statute abuts upon sensitive areas of basic First Amendment rights, it operates to inhibit the exercise of those rights and the uncertain meanings contained in those laws inevitably lead citizens to "steer far wider of the unlawful zone . . . than if the boundaries of the forbidden area were clearly marked." *Grayned v. City of Rockford,* 408 U.S. 104, 108-109 (1975). As petitioner's above arguments clearly show, the guardianship statute is a law that is fraught with uncertain meanings and is subject to arbitrary enforcement. When this enforcement occurs in the realm of financial support of political ideas, the statute cannot pass constitutional muster.

B. Overbreadth

If the lower courts' construction of the statute is valid then

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6. It is particularly appropriate here to note that, since the hearings in this matter, the "mixed personality disorder" found by the trial court has been eliminated and redefined by the Diagnostic and Statistical Manual. *See* Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, Washington, D.C.: APA, 1987, p. 358. Thus, it seems that the term "mental illness" as written by the legislature is subject to constant redefinition by a committee of the American Psychiatric Association. Must citizens now guess at what the next revision might bring in order to steer clear of the proscriptions contained in the statute?

the statute is unconstitutional by reason of its overbreadth. A classic definition of overbreadth declares that a statute is void if, in addition to proscribing speech or conduct that may be constitutionally prohibited, it also brings within its terms speech or conduct which is protected by the First Amendment clauses of freedom of speech and association. *Thornhill v. Alabama,* 310 U.S. 88 (1940).

If the Superior Court is correct that the statute can be stretched to prohibit major financial support of political ideas, then no citizen can feel safe in supporting organizations which, in the words of the trial court, "profess to share his world views." (p. 24a, *infra*).

It is particularly interesting that only recently Mrs. Joan B. Kroc, widow of the McDonald's fast food magnate, contributed one million dollars to the Democratic party for the upcoming presidential campaign. What chilling effect might the Superior Court's ruling have had upon Mrs. Kroc, had she known that she could be declared mentally incompetent for making such an extravagant contribution? Further, what implications might this have for our entire political process?

Justice Marshall described an overbroad statute as one that hangs over peoples' heads like a sword of Damocles. That this Court will ultimately vindicate a person if his speech is determined to be constitutionally protected is of little consequence because the value of a sword of Damocles is that it hangs, not that it drops. *Arnett v. Kennedy,* 416 U.S. 124 (1974) (Marshall J., dissenting).

The focus of the overbreadth doctrine is not necessarily on the individual before the court but on others who may forego protected activity rather than run afoul of the statute's proscription. Again, the Superior Court's ruling, when viewed

in this manner requires the Supreme Court to take a c
in review so as to protect the First Amendment right
the citizens of this democratic nation.

When overbreadth is apparent from the statute,
can be saved if the interpreting courts can clearly ca
constitutional from the unconstitutional applicatio
however, this statute is definitively construed by Pe
appellate courts to limit "mental illness" to those traditi
psychoses characterized by the individual's mental b
reality, and "designing persons" limited to the tradi
artist, and specifically excluding political, religious or ph
ideas and organizations from its scope, then no citiz
free to fully exercise his or her fundamental First A
freedoms.

The problems of selective application and inher
the fact finders is best demonstrated again by the t
own words. During the examination of Lewis con
philosophical beliefs, the court, at sidebar, remarke
know if I am going to sit here and hear about platonic
I want to hear something that is really going to stone
you can probably dig up a dozen or two people in the
who think in that fashion and they wouldn't all be in
(R219a) and by contrast, stated that Lewis was simply
away his money on the La Rouche (sic) organizatio

If the lower courts' construction of the statut
to stand, the "chilling effect" on citizens' rights
minority political or philosophical positions is eno

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES B. CRUMMETT
Counsel of Record
JAMES B. CRUMMETT
& ASSOCIATES, P.C.
Attorneys for Petitioner

JAMES B. CRUMMETT
JOHN S. McVEIGH
On the Petition

APPENDIX A — SUPREME COURT OF PENNSYLVANIA'S DENIAL OF PETITION FOR ALLOWANCE OF APPEAL

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

January 22, 1988

James B. Crummett, Esquire
JAMES B. CRUMMET & ASSOCIATES, P.C.
Suite 1120
325 Chestnut Street
Philadelphia, Pa. 19106

RE: Lewis duPont Smith v. E. Newbold Smith, Margaret DuPont Smith, Stockton N. Smith, Eleuthera S. Grassi and Henry B. duPont Smith
No. 655 E.D. Allocatur Docket 1987

Dear Mr. Crummett:

This is to advise you that the following Order has been endorsed on your Petition for Allowance of Appeal, filed in the above captioned matter:

"January 21, 1988.

Petition Denied.

Per Curiam".

Appendix A

Very truly yours,

s/ Patrick Tassos
PATRICK TASSOS
Deputy Prothonotary

/ma
cc: Leroy Zimmerman, Esquire
Leroy Dubin, Esquire

RECEIVED JAN. 25, 1988

APPENDIX B — JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 02270 Philadelphia, 1986

E. NEWBOLD SMITH, MARGARET DUPONT SMITH, STOCKTON N. SMITH, ELEUTHERA S. GRASSI AND HENRY B. DUPONT SMITH

v.

LEWIS DUPONT SMITH,

Appellant

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of Chester County be, and the same is hereby affirmed.

By the Court:

s/ David A. Szewczak
Prothonotary

Dated: July 21, 1987

APPENDIX C — OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 02270 Philadelphia, 1986

E. NEWBOLD SMITH, MARGARET DUPONT SMITH, STOCKTON N. SMITH, ELEUTHERA S. GRASSI AND HENRY B. DUPONT SMITH

v.

LEWIS DUPONT SMITH,

Appellant

Appeal from the Order Entered on July 23, 1986, in the Court of Common Pleas of Chester County, Orphans' Court Division, No. 1985- 0412.

Filed July 21, 1987

BEFORE: *CIRILLO, P.J., BECK and HESTER, JJ.

OPINION BY HESTER, J.:

This is an appeal by an adjudicated incompetent from a final order. The trial court found appellant to be incompetent due to mental illness, making him liable to dissipate his assets and become the victim of designing persons. The trial court appointed a financial institution as guardian of appellant's estate. We affirm.

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* President Judge Cirillo replaced the deceased Justice Roberts.

Appendix C

On April 11, 1985, appellees, who are parents and siblings of appellant, filed an ex parte petition for a preliminary injunction in the Orphans' Court Division of the Chester County Court of Common Pleas, requesting that appellant be restrained from transferring any of his substantial assets to organizations affiliated with Lyndon LaRouche. At the same time, appellees filed a petition requesting an adjudication of incompetency and the appointment of a guardian of the estate of the incompetent.

On November 12, 1985, following several evidentiary hearings, the trial court found that appellant, by reason of mental illness, was unable to manage his property or was liable to dissipate it or become the victim of designing persons. The trial court issued an adjudication and decree nisi finding appellant incompetent which became a final order on July 23, 1986, after the denial of appellant's exceptions.

Appellant raises six issues in this appeal: 1) whether appellees met their burden of proving by clear and convincing evidence that appellant suffered from a mental illness; 2) whether the trial court erred by labeling a "personality disorder" as a mental illness; 3) whether appellees met their burden of proving by clear and convincing evidence that appellant was liable to dissipate his property or become the victim of designing persons; 4) whether the trial court erred by including the support of a political philosophy or organization within the ambit of the phrase "become the victim of designing persons"; 5) whether the competency statute is constitutional as applied to appellant; and 6) whether the competency statute is constitutional on its face.

Appellant's constitutional issues must be considered, first. We decline to address these issues as appellant did not give notice to the Attorney General of Pennsylvania as required by Pa.R.A.P.

521.[1] *Faust v. Messinger,* 345 Pa. Super. 155, 497 A.2d 1351 (1985).

Our scope of review in determining whether an individual should be adjudicated incompetent and have a guardian of his estate appointed is well established. The trial court has the sound discretion to determine whether the appointment of a guardian is necessary and this court will not reverse absent an abuse of that discretion. *In Re Earnshaw,* 187 Pa. Super. 124, 144 A.2d 480 (1958). "We do not substitute our judgment for that of the court below; even though we, had we been sitting in judgment below, might have reached a contrary result." *Matter of Caine,* 490 Pa. 24, 29, 415 A.2d 13, 16 (1980) *quoting Myers Estate,* 395 Pa. 459, 462, 150 A.2d 525, 526 (1959).

A guardianship can be imposed if it is established that a person is, under 20 Pa.C.S. § 5501, "unable to manage his property,

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1. Rule 521. Notice to Attorney General of Challenge to Constitutionality of Statute

(a) Notice. It shall be the duty of a party who draws in question the constitutionality of any statute in any matter in an appellate court to which the Commonwealth or any officer thereof, acting in his official capacity, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the appellate court, to give immediate notice in writing to the Attorney General of Pennsylvania of the existence of the question; together with a copy of the pleadings or other portion of the record raising the issue, and to file proof of service of such notice.

(b) Status of Attorney General. The Attorney General may be heard on the question of the constitutionality of the statute involved without formal intervention. If the Attorney General files a brief concerning the question the Commonwealth shall thereafter be deemed to be an intervening party in the matter.

or is liable to dissipate it or become the victim of designing persons."[2] Additionally, it must be established that this "inability to manage one's property results from 'infirmities of old age, mental illness, mental deficiency or retardation, drug addiction or inebriety.' " *Matter of Caine, supra,* 490 Pa. at 28, 415 A.2d at 15 *quoting Porter Estate,* 463 Pa. 411, 415, 345 A.2d 171, 173 (1975). Finally, appellant's incompetence must be established by clear and convincing proof. *Matter of Caine, supra,* at 28, 415 A.2d at 15.

Appellant argues that appellees failed to prove by clear and convincing evidence that he was suffering from a mental illness. The trial court found that appellant's personality began to change in early 1985; from "happy-go-lucky" to serious, withdrawn and hostile to his family. Trial court opinion, 11/12/85, at 1. Simultaneously, appellant became increasingly involved with the Lyndon LaRouche organization.[3] Appellant loaned Caucus Distributions, Inc., an affiliate of the LaRouche organization,

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2. § 5501. Meaning of incompetent

"Incompetent" means a person who, because of infirmities of old age, mental illness, mental deficiency or retardation, drug addiction or inebriety:

(1) is unable to manage his property, or is liable to dissipate it or become the victim of designing persons; or

(2) lacks sufficient capacity to make or communicate responsible decisions concerning his person.

3. Appellant suffered nightmares and became extremely withdrawn, "up tight" and nervous. He also began to espouse LaRouche philosophy even though he could not explain it. Reproduced record (hereinafter "R.") at 402a-04a.

$212,000 within two months.[4] This loan was evidenced by an unsecured promissory note for $142,000. Appellant testified that he would not be upset if the loan were not repaid and he was not certain that it would be. R. at 170a. Trial court opinion, 11/12/85, at 2.

Additionally, the trial court found that during the three years prior to this action, appellant incurred substantial losses as the result of ill-advised business investments.[5] Appellees' expert witness, a psychiatrist, who met with appellant and examined several of his writings, concluded that appellant was suffering from a schizoaffective disorder and was likely to become the victim of designing persons.[6] *Id.* at 2.

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4. Appellant's transfers to CDI:

February 13, 1985	$ 6.000.00
February 21, 1985	6.000.00
March 5, 1985	25,000.00
March 8, 1985	5,000.00
March 20, 1985	100,000.00
April 2, 1985	20,000.00
April 4, 1985	50,000.00
	$212,000.00

R. at 118a-24a.

5. Appellant invested $80,000 in the American Walnut Corporation in 1981 and lost the entire amount. R. at 174a. Appellant lost over $23,000 in silver bullion in May, 1981. R. at 175a, 223a. Over a two month period in March, 1984, appellant lost roughly $52,000 in various stocks. R. at 178a-79a.

6. Appellant suffers from a schizophrenic affective disorder which renders him unable to appreciate reality as to relate to it in any way other than in an "inappropriate and disfunctional fashion." R. at 453a-7-453a-8. Appellant

(Cont'd)

Appendix C

Moreover, appellant's expert witnesses, a psychiatrist and a psychologist, testified that appellant was suffering from a mixed personality disorder with inadequate and immature features.[7] R. at 640a-41a, 807a. Upon examination of appellant's letters and testimony, the trial court determined appellant has a "disorganized mind and compensates by setting up an oversimplified view of the world in which he is one of the good guys and 'they' are conspirators bent on mischief. As such, he would be and has been an easy target for anyone who pretends to support him in his efforts to combat the bad guys." Trial court opinion, 11/12/85, at 3.

The trial court was clearly convinced that appellant was "suffering from a 'mental illness' as that term is used in the legislation, so that he no longer has the ability to 'choose' in either a knowledgeable or totally voluntary way." *Id.* at 7. Although the trial court heard conflicting evidence concerning appellant's mental condition, it found appellant "not equipped to deal with his financial affairs in even a minimal way, due to the disorganized and unrealistic way he views finances and world events. He is a target for designing persons and is liable to dissipate his assets, and requires protection of the Court." *Id.* Upon thorough review of the record, we hold that the trial court acted within its sound discretion in finding that appellees proved appellant's mental illness by clear and convincing evidence.

(Cont'd)
suffers "delusions of persecution" and manifests symptoms of a "paranoid individual." R. at 453a-10-453a-15. Because of this mental illness, appellant cannot objectively judge those who say that they share his common ideology thus making it very easy for appellant to get swept up in his colleagues ideas that are of a financial nature. R. at 453a-16.

7. Neither of appellant's expert witnesses believed that appellant suffered from a mental illness. R. at 642a, 807a.

Appendix C

Appellant's next argument is that the trial court erred in labeling a personality disorder a mental illness. This argument ignores the trial court's finding that appellant is mentally ill as set forth in 20 Pa.C.S. § 5501. Trial court opinion, 11/12/85, at 7. Furthermore, this court has held:

> We are not unduly troubled by the question of semantics. The purpose of the Incompetents' Estates Act is preventative [sic] and protective in nature. Card's Appeal, 177 Pa. Super. 502, 110 A.2d 856. The following language of President Judge Baldridge in Refior's Case, 160 Pa. Super. 305, 50 A.2d 523, 527, is particularly appropriate: "Whether an alleged incompetent is found to be mentally 'confused,' 'defective,' 'feeble,' or 'weak' is not vitally important. If, as here, it appears that one's mind is so affected that as a consequence thereof he is liable to dissipate or lose his property and become the victim of designing persons, the court, if other requirements are met, may appoint [or refuse to remove] a guardian".

In Re Earnshaw, supra, 187 Pa. Super at 129, 144 A.2d at 482- 83.

The trial court properly found appellant's mind to be so affected that he was "suffering from a significant impairment in his ability to cope," thus making him liable to dissipate his assets and become the victim of designing persons. Trial court opinion, 11/12/85, at 7.

Appellant further argues that appellees did not meet their burden of proving by clear and convincing evidence that appellant was liable to dissipate his property or become the victim of

designing persons. The trial court recognized that "a man may do what he pleases with his personal estate during his life. He may beggar himself and his family if he chooses to commit such an act of folly." *Bryden Estate,* 211 Pa. 633, 636, 61 A. 250, 251 (1905). Trial court opinion, 11/12/85, at 6. However, the court found by clear and convincing evidence that appellant was not able to choose in a voluntary or knowledgeable manner, and in the event he dissipated his assets, he would not be doing so freely or voluntarily. Following an exhaustive review of the record, we agree.

Finally, appellant argues that the trial court erred by including the support of a political philosophy or organization within the ambit of the phrase "become the victim" of designing persons." The trial court stated:

> It seems to us that the legislation is designed to protect one who has been peculiarly disabled by his or her mental makeup from resisting the exploitation of others. The evidence indicates that the exploitation has already begun, and that Lewis, because of his particular mental makeup, has succumbed to the blandishments of the LaRoach [sic] organization. The evidence further indicates that unless the Court intervenes, Lewis will continue to squander his admittedly substantial resources.

Id. We agree with the trial court that appellant's mental illness has resulted in producing a condition that has made him a victim of the LaRouche organization.

We affirm the order of the trial court adjudicating appellant

incompetent and appointing a financial institution as guardian.

BECK, J., filed a Concurring Opinion.

APPENDIX D — CONCURRING OPINION BY BECK, J.

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 02270 Philadelphia, 1986

E. NEWBOLD SMITH, MARGARET DUPONT SMITH, STOCKTON N. SMITH, ELEUTHERA S. GRASSI AND HENRY B. DUPONT SMITH

v.

LEWIS DUPONT SMITH,

Appellant

Appeal from the Order Entered on July 23, 1986, in the Court of Common Pleas of Chester County, Orphans' Court Division, No. 1985- 0412.

BEFORE: BECK, HESTER AND ROBERTS, JJ.

CONCURRING OPINION BY BECK, J.:

I join the opinion of the majority. I write separately in order to emphasize that a finding of incompetency under the Decedents, Estates, and Fiduciaries Code must be based upon a searching inquiry into the facts of the particular case before the court.

As the Pennsylvania Supreme Court has noted, a law "which empowers a court to declare an individual mentally incompetent and to place such individual's business affairs in the hands of another is 'a dangerous statute easily capable of abuse . . .' " *Myers Estate,* 395 Pa. 459, 462, 150 A.2d 525, 526 (1959) (citing *Denner v. Beyer,* 352 Pa. 386, 388, 42 A.2d 747, ____ (1945)). *See generally* Comment, *Guardianship Incompetency Standard,*

124 U. Pa. L. Rev. 1045 (1976). This danger of abuse is especially great where the alleged incompetent has given large sums of money to an organization which espouses a political ideology that is outside the mainstream. However, in the case *sub judice,* I find upon careful reflection sufficient evidence of record from which the trial court would have fairly concluded that appellant's incompetency was established and that the donations or loans he made to the LaRouche organization were manifestations of that incompetency. If appellant had given or lent money to the Republican or Democratic parties or to a recognized charity under the same circumstances as existed in this case, I would also have concluded that the trial court did not err in finding him incompetent. I therefore conclude that the incompetency statute was not applied in a discriminatory manner and that the trial court's order should be affirmed.

Appellant's own testimony reveals a certain confusion and apathy regardinq his financial affairs. For example, at a hearing on April 16, 1985, he was unable to explain why he had transferred $50,000 to a group affiliated with Lyndon LaRouche on April 4, 1985, and he did not remember whether this transfer represented a gift or a loan. N.T. April 16, 1985 at 48-50. Appellant also had difficulty adding figures and he was unable to count backward by threes.[1] Appellee's expert witness diagnosed appellant as suffering in part from an organic mental disorder which impaired

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1. A. Backwards from a hundred by threes?

Q. By threes.

A. By threes. *Ninety-seven, 94, 80 — 87. Eighty-three, 79, 60 — uhm, 69, 50* — how much longer do you want me to go?

(Cont'd)

his ability to calculate. N.T. June 12, 1985 at 37; July 29, 1985 at 51-54.

The record also supports the inference that appellant has already become the victim of designing persons. Appellant's former roommate testified that during the fall of 1984, a representative of LaRouche often telephoned appellant two or three times a night to solicit money. N.T. June 12, 1985 at 5-6. At this time, appellant refused to make a donation; however, he became deeply involved in the LaRouche orqanization in early 1985 after attending a series of lectures sponsored by the group. During this period, appellant told his brother that he was sleeping only two or three hours per night. N.T. June 11, 1985 at 83.

Between February 13, 1985 and April 4, 1985, appellant donated or loaned a total of $212,000 to the LaRouche organization. Although appellant assured his family that he would not give the organization any more money until he received his first interest payments on his loans, he changed his mind after visiting the group's headquarters in Leesburg, Virginia. N.T. April 20, 1985 at 13; June 11, 1985 at 199. On April 10, 1985, he attempted to wire an additional $75,000 to a LaRouche affiliate. It was at this point that his family filed a petition for the appointment of a guardian.

On June 11, 1985, appellant informed the trial court that he planned to move to Leesburg in order to work for the

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(Cont'd)

Q. All the way.

A. Be here a long time.

N.T. June 11, 1985 at 12.

organization in return for what he described as a "nominal stipend." N.T. June 11, 1985 at 69. He also said that he was not interested in finding out how much he would be paid prior to relocating. *Id. at 71.* Later that month, he was told by his father's secretary that his mother had become severely depressed as a result of his actions; he reportedly responded, "[W]ell, someone had to be sacrificed for the cause and it might as well be her." N.T. August 30, 1985 at 44. Furthermore, in January 1986, six months before the trial court issued its final order, appellant was convicted in federal court of assaulting in an airport an individual who had questioned LaRouche's policies.

Finally, it is significant that even one of appellant's own expert witnesses testified that appellant has a "mental disorder" and that "he's more likely to be influenced, conned, if you will, than the average individual." N.T. July 9, 1985 at 75-76.

In light of all the circumstances of this case, the trial court did not abuse its discretion by concluding that there is clear and convincing evidence that appellant suffers from a serious mental disturbance, that he is likely to dissipate his estate, and that he is not capable of making a knowing and voluntary decision to dissipate his estate because of his mental condition. Accordingly, I agree that the trial court acted properly when it appointed a guardian to manage appellant's assets.

APPENDIX E — FINAL ORDER OF THE COURT OF COMMON PLEAS, WOOD, J.

IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

E. NEWBOLD SMITH, et al

vs.

LEWIS duPONT SMITH
NO. 1985-0412

MEMORANDUM ORDER

AND NOW, this 23d day of July, 1986, after argument and upon review of the record and briefs, Respondent's Exceptions to our Adjudication and Decree Nisi of November 12, 1985 are dismissed. I direct that the Decree Nisi be entered as the final Order of this Court.

With respect to Respondent's Exceptions to certain of my factual findings, I will stand on the record, which, in my opinion supports those findings.

The major legal dispute in this case was one of definition. The question was whether Respondent's particular mental problem amounted to a "mental illness" as that term is used in 20 Pa. C.S.A. § 5501(1). I concluded that it did because it has made Respondent unable to protect himself or his estate from designing persons or from dissipating his assets. Respondent, in my judgment, has not made a knowing and voluntary choice to throw away his money on the La Rouche organizations. Instead, his mental disorder has made him unable to resist their blandishments.

Appendix E

Whether or not certain personality disorders are mental illnesses is a question on which those trained in the field are not in agreement. In other contexts, the distinction between one suffering from a personality disorder and one who displays a traditional mental illness has been called "too subtle to be traced definitively by the judicial mind": *State, ex rel R.S. v. Trent,* ____ W. Va. ____, 289 S.E. 2d 166, 172 (1982); see also *Johnson v. Noot,* ____ Minn. ____, 323 N.W. 2d 724 (1982). As a judge, I must be primarily concerned with behavior and its consequences. In interpreting the guardianship statutes, I must consider "the mischief to be remedied": 1 Pa. C.S.A. § 1921(c)(3).

Following argument in this matter, counsel for Respondent called to our attention a California case, *Katz v. Superior Court of California,* 73 Cal. App. 3d 952 (1977). We find that case distinguishable in two major respects: First, it dealt with the appointment of a guardian of the person, and second, it dealt with a situation where petitioners were attempting to restrain the liberty of the alleged incompetents for the purpose of deprogramming. Here, I did not restrain Lewis Smith's liberty, nor have I limited his right to speak, believe, or associate with others. I have only limited his use of his money to the extent necessary to prevent him from dissipating his assets to any substantial degree. Counsel for Lewis has consistently treated this proceeding as one dealing with Lewis's rights to free speech and free association. It is not that kind of case. Like almost every other proceeding under 20 P.C.S.A., Chapter 55, that comes before me, all I have to decide, and all I did decide, was whether Lewis, because of a mental illness, was likely to become the victim of designing persons, so that I should enter an Order protecting his estate. Lewis's First Amendment freedoms remain intact, and he may exercise them as foolishly as he wishes.

Appendix E

The Petition of Wilmington Trust Company for approval to commence legal action is granted: See 20 Pa. C.S.A. § 5521; Pa. R.C.P. 2053.

BY THE COURT:

s/ J. Wood
J.

FROM THE RECORD
ATTEST: Kathryn Howard
Ass't Clerk of the Orphans Court
Division of the Court of Common Pleas
of Chester County, Pa.
July 24, 1986

APPENDIX F — DECREE NISI OF THE COURT OF COMMON PLEAS, WOOD, J.

IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

E. NEWBOLD SMITH, et al

v.

LEWIS duPONT SMITH

NO. 1985-0412

ADJUDICATION

The parents, brothers and sisters of Lewis duPont Smith have petitioned this Court to adjudge him an incompetent and to appoint a guardian of his estate. After numerous hearings and after closing arguments by both counsel, we make the following

FINDINGS OF FACT

1. Respondent Lewis duPont Smith is a 28 year old unmarried male who resides at 7003 Goshen Road, Newtown Square, Chester County, Pennsylvania.

2. Respondent's estate contains at least One Million Five Hundred Thousand Dollars ($1,500,000) in cash and marketable securities.

3. Petitioners are Lewis's parents, brothers and sisters. They presented testimony which established that Respondent's

personality started to change about the beginning of 1985. He went from being a friendly, "happy go lucky" sort to being a serious and withdrawn person hostile to his family.

4. The timing of the personality change coincided with Lewis's increased involvement with a political organization headed by one Lyndon LaRoach.

5. Respondent thereafter became deeply involved with the LaRoach organization and lent Caucus Distributors, Inc., an arm of LaRoach, $212,000 within a period of less than two months.

6. The only evidence of this loan was an unsecured promissory note for $142,000. Lewis was also prepared to wire an additional $75,000 when this action was commenced and we enjoined the transfer.

7. Lewis testified that it would not upset him if the loan wasn't paid back and that he wasn't certain that it would be.

8. During the three years prior to the commencement of this action, Lewis made sundry other ill-advised business investments and incurred substantial losses as a result.

9. Psychiatrist David Halperin, M.D., who had met with a the family and with Lewis in New York and examined various writings of Lewis's, concluded that he was suffering from a schizoaffective disorder and, as a result, was liable to become the victim of designing persons.

10. Lewis's medical experts, Dr. Gerald Cooke, a psychologist, and Dr. Robert Sadoff, a psychiatrist, both testified that he was suffering from a mixed personality disorder with

inadequate and immature features.

11. Our own evaluation of Lewis from examining the various letters which he wrote and from observing his testimony is that he has a disorganized mind and compensates by setting up an oversimplified view of the world in which he is one of the good guys and "they" are conspirators bent on mischief. As such he would be and has been an easy target for anyone who pretends to support him in his efforts to combat the bad guys.

12. Originally Lewis resisted the LaRoach organization's requests for money and he even became a little angered by them and said that he would not give any money. He wound up doing the opposite.

DISCUSSION

Section 5501(1) of the Probate, Estates and Fiduciaries Code defines an "incompetent" as

> a person who, because of infirmities of old age, mental illness, mental deficiency or retardation, drug addiction or inebriety:
>
> (1) is unable to manage his property, or is liable to dissipate it or become the victim of designing persons . . . .

20 Pa. C.S.A. § 5501(1).

We are required here to decide whether or not Lewis Smith is likely to dissipate his estate or become the victim of designing persons because of a "mental illness". We may summarize the evidence as indicating that Lewis has some sort of mental disorder,

and that he has in the past not only made unwise investments, but most recently has practically given money away to a political organization with unusual, if not suspect, goals and motives. In analyzing whether the statute intends us under these circumstances to appoint a guardian of Lewis' estate, we must look first to the medical meaning (if any) of the term "mental illness"; thence to the intent of the legislature; and thence to the evidence in this particular case.

Two psychiatrists and a psychologist testified in this case. The family's psychiatrist described Lewis as having a mental illness, while his own psychiatrist and psychologist simply ascribed a mental disorder to him. All three experts referred to a work published by the Psychiatric Association, the Diagnostic and Statistical Manual (DSM-III), in defining the terms which which they used. That manual itself does not distinguish between mental illnesses or personality disorders. Rather, it talks simply in terms of mental or personality disorders, as follows:

> Personality traits are enduring patterns of perceiving, relating to, and thinking about the environment and oneself, and are exhibited in a wide range of important social and personal contexts. It is only when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress that they constitute Personality Disorders.

A "personality disorder", then, is a way of thinking or acting which constitutes a substantial departure from the norm, and interferes with the ability of one to cope with life in a normal or realistic way.

Appendix F

All three experts appear to agree that Lewis is suffering from a personality disorder, *at least*. The evidence itself shows the following: a history of being unable to deal successfully with financial affairs; difficulty in dealing with numbers; difficulty in organizing his life and in holding a job; difficulty in presenting his thoughts to others in a logical and rational way; an "us against them" view of life and society, and a tendency to think in terms of polarization and polemics; and difficulty in resisting the importunings of persons who profess to share his world view. We conclude that Lewis does indeed suffer from a personality disorder, of sufficient severity that it has significantly impaired his ability to manage his personal and financial affairs in a way approoriate to his own interests.

It has been suggested that Lewis' generous impulses differ only in subject matter from those impulses which lead deeply religious persons to support generously the religion of their choice or to give to the poor. There is a difference, however, even though (like pornography) it may be difficult to define. We are reluctant to equate the importunings of the Lyndon LaRoach organization with the message of Christianity or of any of the other recognized religions.

Is this the sort of thing which the legislation regarding the appointment of guardians was intended to guard against? We conclude that it is. It seems to us that the legislation is designed to protect one who has been peculiarly disabled by his or her mental makeup from resisting the exploitation of others. The evidence indicates that the exploitation has already begun, and that Lewis, because of his particular mental makeup, has succumbed to the blandishments of the LaRoach organization. The evidence further indicates that unless the Court intervenes,

Lewis will continue to squander his admittedly substantial resources.

We acknowledge that under normal circumstances, "[A] man may do what he pleases with his personal estate during his life. He may beggar himself and his family if he *chooses* to commit such an act of folly.": *Bryden Estate,* 211 Pa. 633, 636, 61 A.2d 250, 251 (1905) (emphasis added). Because of the serious intrusion on a person's right to manage his or her property, the proof of mental incompetency must be clear and convincing: *Myers Estate,* 395 Pa. 459, 150 A.2d 525 (1959), *Porter Estate,* 463 Pa. 411, 345 A.2d 171 (1975), *Matter of Caine,* 490 Pa. 24, 415 A.2d 13 (1980). For the reasons stated above, we are clearly convinced that Lewis is suffering from a "mental illness" as that term is used in the legislation, so that he no longer has the ability to "choose" in either a knowledgeable or totally voluntary way. All three experts who testified confirmed that he was suffering from a significant impairment in his ability to cope. We are also persuaded by the nature and character of Lewis's own testimony: *Myers, supra,* at 417. "One's mental capacity is best determined by his spoken words, his acts and conduct": *Ryman's Case,* 139 Pa. Super. 212, 218, 11 A.2d 677 (1940). Our observations of his testimony and his writings convince us that he is not equipped to deal with his financial affairs in even a minimal way, due to the disorganized and unrealistic way he views finances and world events. He is a target for designing persons and is liable to dissipate his assets, and requires the protection of the Court.

We will direct, however, that a financial institution and not an individual be appointed guardian.

Appendix F

CONCLUSIONS OF LAW

1. The Orphans' Court Division has jurisdiction over this matter.

2. Respondent, by reason of mental illness, is unable to manage his property; or is liable to dissipate it or become the victim of designing persons.

DECREE NISI

AND NOW, this 12th day of November, 1985, after hearing, we find Lewis duPont Smith to be incompetent within the meaning of 20 Pa. C.S.A. § 5501 and direct Petitioners to recommend to the Court a financial institution of their choice to serve as guardian of Respondent's estate.

This DECREE NISI shall become the final order of the Court unless exceptions are filed within ten (10) days of this date.

BY THE COURT:

s/ J. Wood
J.

FROM THE RECORD
ATTEST: Doris M. Skeles
1st Asst. Clerk of Orphans' Court
Division of the Court of Common Pleas
of Chester County, Pa.
November 13, 1985